

**Master Contract Number**

**T02-MST-001**

**for**

**Internet-Initiated Automated Clearing  
House Payment Services**

**(“Internet Check Payment Services”)**

**Between the**

**State of Washington**

**Department of Information Services**

**and**

**U.S. Bank National Association**

**Effective Date: June 14, 2002**

**Table of Contents**  
**Internet Check Payment Services Master Contract**

1. Definition of Terms.....	2
-----------------------------	---

**Contract Term**

2. Term.....	4
3. Survivorship.....	5

**Pricing, Invoice and Payment**

4. Pricing.....	5
5. Advance Payment Prohibited.....	6
6. Taxes.....	6
7. Invoice and Payment.....	6
8. Overpayments to Vendor .....	7

**Vendor's Responsibilities**

9. In-State Presence.....	7
10. RFP Mandatory Requirements.....	7
11. Services and Supplemental Work Order .....	7
12. Commencement of Work.....	8
13. Test and Acceptance .....	8
14. Ownership/Rights in Data.....	8
15. Site Security.....	9
16. Training.....	9
17. Services Availability and Out-of-Service Credits.....	10
18. Disaster Recovery .....	10
19. Settlement and Authentication.....	10
20. Risk of Loss and Surety Bond .....	11
21. Vendor Commitments, Warranties and Representations .....	11
22. Protection of Purchaser's Confidential Information .....	11

**Contract Administration**

23. Legal Notices .....	12
24. DIS Contract Administrator.....	13
25. Vendor Account Manager.....	13
26. Vendor Project Manager.....	14
27. Purchaser Project Manager .....	14
28. Section Headings, Incorporated Documents and Order of Precedence .....	14
29. Entire Agreement.....	14
30. Authority for Modifications and Amendments.....	15
31. Additional Services.....	15
32. Independent Status of Vendor.....	15
33. Governing Law .....	15
34. Subcontractors .....	15
35. Assignment .....	16
36. Publicity.....	16
37. Review of Vendor's Records .....	16
38. Right of Inspection .....	17

## Table of Contents, cont'd

### General Provisions

39. Patent and Copyright Indemnification .....	17
40. Save Harmless .....	18
41. Insurance .....	18
42. Industrial Insurance Coverage .....	19
43. Licensing Standards .....	20
44. Antitrust Violations .....	20
45. Compliance with Civil Rights Laws .....	20
46. Severability .....	20
47. Waiver .....	20
48. Treatment of Assets .....	20
49. Vendor's Proprietary Information .....	21

### Disputes and Remedies

50. Disputes .....	21
51. Attorneys' Fees and Costs .....	22
52. Non-Exclusive Remedies .....	22
53. Liquidated Damages .....	22
54. Failure to Perform .....	23
55. Limitation of Liability .....	23

### Contract Termination

56. Termination for Default .....	24
57. Termination for Convenience .....	24
58. Termination for Withdrawal of Authority .....	25
59. Termination for Non-Allocation of Funds .....	25
60. Termination for Conflict of Interest .....	25
61. Termination Procedure .....	25
62. Transition Cooperation .....	26

### Activity Reporting and Administration Fee

63. Master Contract Administration Fee .....	26
64. Master Contract Activity Reporting .....	26
65. Transaction Volume Reports .....	27
66. Failure to Remit Reports/Fees .....	27

### Contract Execution

67. Authority to Bind .....	28
68. Counterparts .....	28

### Schedules

- Schedule A: Authorized Services and Price List*  
*Schedule B: Supplemental Work Order Template*  
*Schedule C: Vendor's Disaster Recovery Plan*

State of Washington  
Department of Information Services

2411 Chandler Court SW  
Olympia, WA 98502-6038

**MASTER CONTRACT NUMBER T02-MST-001**  
**for**  
**Internet-Initiated Automated Clearing House Payment Services**  
**("Internet Check Payment Services")**

**PARTIES**

This Master Contract is entered into by and between the state of Washington acting through the **Department of Information Services**, an agency of Washington State government ("Purchaser"), located at 1110 Jefferson Street SE, Olympia, WA 98504, and **U.S. Bank National Association**, a corporation licensed to conduct business in the state of Washington ("Vendor"), located at 1420 5<sup>th</sup> Avenue, Seattle, WA 98101, for the purpose of providing Internet-Initiated Automated Clearing House ("ACH") Payment Services ("Internet Check Payment Services" or "Services").

**RECITALS**

The state of Washington, acting by and through DIS, issued a Request for Proposal dated January 30, 2002, (Exhibit A) for the purpose of purchasing Internet Check Payment Services in accordance with its authority under chapter 43.105 RCW.

Vendor submitted a timely Response to the RFP (Exhibit B).

DIS evaluated all properly submitted Responses to the above-referenced RFP and has identified Vendor as the apparently successful Vendor.

NOW THEREFORE, DIS awards to Vendor this Master Contract, the terms and conditions of which shall govern Vendor's furnishing to Purchasers the Internet Check Payment Services. This Master Contract is not for personal use.

This Master Contract is an optional-use contract that neither financially binds the State nor otherwise obligates the State to purchase any Services hereunder. Nor does the Master Contract prevent the State from purchasing the same or similar Services from other sources, *provided that*, all legal acquisition requirements are satisfied.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

**1. Definition of Terms**

The following terms as used throughout this Contract shall have the meanings set forth in this Section 1.

**"Acceptance Date"** shall mean the date of Purchaser's written notification to Vendor that the Services have successfully completed acceptance testing.

**"Application"** shall mean any interactive, Web-based, software program(s) used to deliver government services to citizens, businesses, and government, or provide for the exchange of information and the transaction of business between, citizens, businesses, and government.

**"Automated Clearing House (ACH) Network"** shall mean a central distribution and settlement system for electronic items, including funds, exchanged between depository financial institutions, governed by the Operating Rules and Guidelines of the National ACH Association (NACHA).

**"Biller"** shall mean the same as **"Purchaser"**.

**"Business Days and Hours"** shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

**"Confidential Information"** shall mean information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, bank routing numbers, checking account numbers, other bank account information, driver's license numbers, medical data, law enforcement records, Purchaser source code or object code, Purchaser security data, or any payment or financial data associated with the Internet Check Payment Services.

**"DIS"** shall mean the Washington State Department of Information Services.

**"DIS Contract Administrator"** shall mean that person designated by DIS as responsible for the maintenance and administration of this Master Contract, notices, reports and any other pertinent documentation or information. The DIS Contract Administrator may also conduct periodic performance or financial audits related to this Master Contract.

**"DIS Contracting Officer"** shall mean the Director of the Department of Information Services or the person(s) to whom signature authority has been delegated in writing.

**"Effective Date"** shall mean the first date this Master Contract is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this Master Contract.

**"Exhibit A"** shall mean the RFP.

**"Exhibit B"** shall mean Vendor's Response to the RFP.

**"Internet-Initiated Automated Clearing House Payment Services ("Internet Check Payment Services")"** shall mean Internet-initiated, ACH payment services including: (i) set-up and hosting of standard and/or customized Internet Check Payment Services Payment Screens on the Web; (ii) processing payment transactions (e.g., Payor Authentication, Enrollment, Authorization, Payment Scheduling, and Confirmation) via the ACH Network in compliance with

NACHA Operating Rules; and (iii) ongoing hosting of all payment data along with interactive Purchaser support to be provided 24 hours a day, 365 days a year.

**"Internet Check Payment Services"** shall mean Internet-Initiated Automated Clearing House Payment Services.

**"Master Contract"** shall mean this document, all schedules and exhibits, Supplemental Work Orders, and all amendments hereto.

**"Out-of-Service Condition"** shall mean the unavailability of Vendor's Internet Check Payment Services lasting 30 cumulative minutes or more in any 24-hour period.

**"Out-of-Service Credit"** shall mean 1/30<sup>th</sup> of the monthly charge for the Internet Check Payment Services affected by the Out-of-Service Condition for the month prior to the month in which the outage occurred.

**"Payor"** shall mean the citizens, businesses, and other governmental entities transacting business with Purchasers.

**"Price(s)"** shall mean charges, costs, rates, and/or fees charged for the Services under this Master Contract and shall be paid in United States dollars.

**"Proprietary Information"** shall mean information owned by Vendor to which Vendor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**"Purchaser"** shall mean DIS and those government or nonprofit entities who have entered into an Interlocal or Customer Service Agreement with DIS. **"Purchaser"** shall mean the same as **Billor**.

**"Purchaser Project Manager"** shall mean the person designated by Purchaser who is assigned as the primary contact person whom Vendor's Project Manager shall work with for the duration of a Supplemental Work Order.

**"RCW"** shall mean the Revised Code of Washington.

**"RFP"** shall mean the Request for Proposal used as a solicitation document to establish this Master Contract, including all its amendments and modifications, Exhibit A attached hereto.

**"Response"** shall mean Vendor's Response to DIS' RFP for Internet-Initiated Automated Clearinghouse Payment Services (Internet Check Payment Services), Exhibit B attached hereto.

**"Service(s)"** shall mean the Internet-Initiated Automated Clearing House Payment Services (Internet Check Payment Services).

**"Specifications"** shall mean the technical and service and other specifications set forth in the RFP, Exhibit A, and any additional specifications set forth in Vendor's Response, Exhibit B.

**"State"** shall mean DIS, any division, section, office, unit or other entity of DIS or any of the officers or other officials lawfully representing DIS. State may also include Purchaser.

**"Supplemental Work Order"** or **"SWO"** shall mean the written agreement between Purchaser and Vendor for Services. There shall be a separate SWO for each Application developed. A template SWO is attached as Schedule B.

**"Subcontractor"** shall mean one not in the employment of Vendor, who is performing all or part of the business activities under this Master Contract under a separate contract with Vendor. The term "Subcontractor" means Subcontractor(s) of any tier.

**"Vendor"** shall mean U.S. Bank National Association, its employees and agents. Vendor also includes any firm, provider, organization, individual, or other entity performing the business activities under this Master Contract. It shall also include any Subcontractor retained by Vendor as permitted under the terms of this Master Contract.

**"Vendor Account Manager"** shall mean a representative of Vendor who is assigned as the primary contact person whom the DIS Contract Administrator shall work with for the duration of this Master Contract, unless replaced, with advance approval of the DIS Contract Administrator, and as further defined in the section titled **Vendor Account Manager**.

**"Vendor Project Manager"** shall mean a representative of Vendor who is assigned as the primary contract person whom the Purchaser Project Manager shall work with to coordinate and oversee Vendor's Services provided to Purchaser under a Supplemental Work Order (SWO). The Vendor's Project Manager will be the Purchaser's contact for resolving issues, monitoring and reporting on the status of the Services.

**"Work Product"** shall mean data and products produced under this Master Contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

## Contract Term

### 2. Term

#### 2.1. Term of Master Contract

- a) The initial term of this Master Contract shall be three (3) years, commencing upon the Effective Date.
- b) This Master Contract's term may be extended for up to five (5) additional years, provided that the extensions shall be at DIS's option and shall be effected by DIS giving written notice of its intent to extend this Master Contract to Vendor not less than thirty (30) calendar days prior to the then-current Master Contract term's expiration and Vendor accepting such extension prior to the then-current Master Contract term's expiration. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing.

#### 2.2. Term of Supplemental Work Order (SWO).

- a) The initial term of a SWO will be two (2) years. Purchaser and Vendor may agree to a shorter term for the SWO.
- b) SWOs may be renewed for additional terms of up to two (2) years each.
- c) At Purchaser's option, SWOs or renewal SWOs entered into prior to the expiration or other termination of the Master Contract (except **Termination for Default**) may be completed under the Master Contract terms and conditions in effect when the SWO or renewal SWO was entered into.

- d) The SWO may be terminated in accordance with the termination sections of this Master Contract or as mutually agreed between the parties.
- e) No new SWOs or renewal SWOs may be entered into after the expiration or other termination of the Master Contract.

### 3. Survivorship

All license and purchase transactions executed and Services provided pursuant to the authority of this Master Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Master Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Master Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Master Contract shall so survive. In addition, the terms of the sections titled **Overpayments to Vendor; Ownership/Rights in Data; Vendor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Review of Vendor's Records; Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability** shall survive the termination of this Master Contract.

## Pricing, Invoice and Payment

### 4. Pricing

- 4.1. Vendor agrees to provide the Services at the Prices set forth in Schedule A, which establishes Prices for the initial term and the first two (2) optional years of this Master Contract. Vendor shall charge no other Prices for implementation of Vendor's Services. However, the Prices do not include banking service charges (e.g., account maintenance, account debits, and monthly maintenance fees) related to automatically transferring funds to a Purchaser-specified account. The fees for these banking services are set forth in the Office of State Treasurer's Master Deposit Agreement with Vendor for State Agency Purchasers; or through individual agreement with Vendor for other Purchasers.
- 4.2. Prices may not be increased during the initial term of the Master Contract and the first two (2) optional years.
- 4.3. If Vendor reduces its Prices for any of the Services during the term of this Master Contract and the optional years, Purchasers shall have the immediate benefit of such lower Prices. Vendor shall send notice to the DIS Contract Administrator with the reduced Prices within fifteen (15) Business Days of the reduction taking effect.
- 4.4. At least one hundred twenty (120) calendar days before the end of the second optional year (year 5 of the Master Contract), Vendor may propose new Prices by written notice to the DIS Contract Administrator. Any Price increase shall be a percentage increase of fees specified in Schedule A for year 5. Any such percentage increase shall not be greater than five percent (5%) plus the percentage increase in the Consumer Price Index (as reported by the Bureau of Labor Statistics) for the prior annual reporting period. Price adjustments will be taken into consideration by DIS Contract Administrator when determining whether to extend this Master Contract.
- 4.5. Vendor agrees that all the Prices, terms, warranties, and benefits provided in this Master Contract are comparable to or better than the terms presently being offered by Vendor to



any other governmental entity purchasing the same quantity under similar terms. If during the term of this Master Contract and any optional years Vendor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Master Contract, Vendor shall be obligated to provide the same to all Purchasers.

**5. Advance Payment Prohibited**

No advance payment shall be made for Services furnished by Vendor pursuant to this Master Contract.

**6. Taxes**

- 6.1. Purchaser will pay sales and use taxes, if any, imposed on the Services acquired hereunder. Vendor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Vendor's income or gross receipts, or personal property taxes levied or assessed on Vendor's personal property. DIS, as an agency of Washington State government, is exempt from property tax.
- 6.2. Vendor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Master Contract.
- 6.3. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for Vendor or Vendor's staff shall be Vendor's sole responsibility.

**7. Invoice and Payment**

- 7.1. Vendor will submit properly itemized invoices to Purchaser Project Manager, or other person identified in the SWO contact information, and a duplicate invoice to the appropriate contact person identified in each SWO entered into by Purchaser. Invoices shall provide and itemize, as applicable:
  - a) Master Contract number T02-MST-001;
  - b) Purchaser SWO number(s) and, if applicable, field/purchase order number;
  - c) Vendor's name, address, phone number, e-mail address, fax, and Federal Taxpayer Identification Number;
  - d) Date(s) that Services were provided;
  - e) Description of Services provided, and if applicable the number of hours worked;
  - f) Price for Services;
  - g) Applicable discounts;
  - h) Net invoice Price for each Service;
  - i) Total purchase price;
  - j) Applicable taxes;
  - k) DIS Master Contract Administration Fee (0.5% or 0.005 of the total purchase price);
  - l) Other applicable charges;
  - m) Total invoice Amount; and
  - n) Payment terms including any available prompt payment discounts.

- 7.2. Vendor agrees to work with DIS and Purchasers to implement an appropriate tracking code to facilitate the association of each Purchaser to its subdivision and/or Application for invoicing purposes.
- 7.3. Payments shall be due and payable within thirty (30) calendar days after the Acceptance Date for Services or thirty (30) calendar days after receipt of properly prepared invoices, whichever is later.
- 7.4. Incorrect or incomplete invoices will be returned by Purchaser to Vendor for correction and reissue.
- 7.5. The Master Contract number, T02-MST-001 and the applicable Purchaser SWO number must appear on all bills of lading, packages, and correspondence relating to this Master Contract.
- 7.6. Purchaser shall not honor drafts, nor accept goods on a sight draft basis.
- 7.7. If Purchaser fails to make timely payment, Vendor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar (\$1). Payment will not be considered late if payment is deposited electronically in Vendor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Services or receipt of Vendor's properly prepared invoice, whichever is later.

#### **8. Overpayments to Vendor**

Vendor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Master Contract within thirty (30) days written notice. If Vendor fails to make timely refund, Purchaser may charge Vendor one percent (1%) per month on the amount due, until paid in full.

### **Vendor's Responsibilities**

#### **9. In-State Presence**

Vendor shall have or establish, within thirty (30) days of the effective date of this Master Contract, a place of business staffed by Vendor-employees within Washington State and shall maintain such place of business for the duration of the Master Contract and any SWOs.

#### **10. RFP Mandatory Requirements**

The RFP mandatory requirements are essential substantive terms of this Master Contract. Services provided under this Master Contract shall meet or exceed all the mandatory requirements of the RFP.

#### **11. Services and Supplemental Work Order**

- 11.1. All Services shall be performed pursuant to the terms of this Master Contract and shall be documented in a SWO established between Purchaser and Vendor. A template for a SWO is attached as Schedule B.
- 11.2. The SWO shall at a minimum:
  - a) Reference this Master Contract, T02-MST-001;

- b) Describe the work to be performed;
  - c) Specify the term;
  - d) Identify all of Purchaser's information that Vendor needs in order to provide Services;
  - e) Select Standard or Custom Payment Screens;
  - f) Provide a detailed schedule for implementation;
  - g) Indicate whether co-branding will be allowed;
  - h) Specify the Master Contract Set-Up Fee for the Standard Payment Screens or the Hourly Rate and total Vendor hours to be provided (whichever is applicable), price for any additional services, and the total cost of the project;
  - i) Describe Vendor's roles and responsibilities and identify specific Vendor staff, including Vendor's Project Manager;
  - j) Describe Purchaser's roles and responsibilities and identify specific Purchaser staff, including Purchaser's Project Manager; and
  - k) Provide a signature block for both parties.
- 11.3. The terms and conditions of any SWO cannot conflict with the terms and conditions of this Master Contract. In the event of any conflict, the Master Contract shall prevail.

## **12. Commencement of Work**

No work shall be performed by Vendor until an SWO is executed by Vendor and Purchaser and is received by Vendor.

## **13. Test and Acceptance**

- 13.1. Acceptance testing of the Services shall begin within two (2) Business Days after notification from Vendor that the Services are available. The acceptance testing period shall continue for five (5) business days.
- 13.2. If the Services are acceptable, i.e., conform to the Specifications, Purchaser will notify Vendor in writing. If the Services are not acceptable, Purchaser shall document the changes required to make the Services acceptable, and provide them to Vendor within three (3) Business Days of the official notification to Vendor that Services are not acceptable. If after thirty (30) calendar days, the Services still have not been accepted, Purchaser may, at its option: (i) declare Vendor to be in breach and terminate the SWO; or, (ii) continue the acceptance testing for an additional thirty (30) calendar days.
- 13.3. Multiple instances of Vendor's Services not passing acceptance testing will be considered a failure to perform.

## **14. Ownership/Rights in Data**

- 14.1. Vendor shall provide Purchaser with a Pre-existing Internet Check Payment Services product ("Pre-existing Material"). Payment Screens associated with this Pre-existing Material will be customized for the state of Washington Master Contract and for individual SWOs. Such Payment Screens and all coding necessary for the presentation of the Payment Screens via the Internet shall be licensed to the state of Washington or Purchaser, as applicable, on a nonexclusive, perpetual, royalty-free, and irrevocable basis. Purchaser may publish, transfer, reproduce, deliver, perform, display, and dispose of such

Payment Screens and applicable coding, and authorize others to do so except that such license shall be limited to the extent to which Vendor has a right to grant such a license.

- 14.2. Vendor agrees that any custom additions and modifications to its Pre-existing Material and all data and work products produced pursuant to this Master Contract and any SWO (collectively called "Work Product") shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq.*, and shall be owned by Purchaser.
- 14.3. Vendor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.
- 14.4. If for any reason the Work Product would not be considered a work made for hire under applicable law, Vendor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 14.5. Vendor shall execute all documents and perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.
- 14.6. Vendor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Vendor ownership in any Work Product, without the prior written permission of Purchaser. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 14.7. Vendor shall exert all reasonable effort to advise Purchaser at the time of delivery of Pre-existing Material furnished under this Master Contract and any SWO, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Master Contract and any SWO. Vendor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Pre-existing Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Vendor with respect to any Pre-existing Material delivered under this Master Contract and any SWO. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Pre-existing Material by Vendor.

## **15. Site Security**

While on Purchaser's premises, Vendor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

## **16. Training**

Vendor agrees to provide training as set forth in its Response (Exhibit B), in accordance with the requirements of the RFP (Exhibit A).

## 17. Services Availability and Out-of-Service Credits

- 17.1. Vendor shall immediately notify DIS and all Purchasers of all system outages and system changes that directly affect the Services.
- 17.2. Vendor's Services shall be available 24 hours per day, 7 days a week, 365 days a year and shall be operational 99.95 percent (99.95%) of the time during any twenty-four (24) hour period.
- 17.3. Vendor's inability to deliver its Services to this level, excluding problems due solely to Purchaser's network or equipment, shall be deemed "Out-of-Service." Being Out-of-Service for thirty (30) cumulative minutes or more in any 24-hour period constitutes an "Out-of-Service Condition."
- 17.4. Vendor shall provide Purchaser with an **Out-of-Service Credit** for every Out-of-Service Condition for each Application, to be applied in the month following the occurrence. The Out-of-Service Credit shall be an amount equal to 1/30<sup>th</sup> of the monthly charge for the Application affected by the Out-of-Service Condition for the month prior to the month in which the outage occurred.

## 18. Disaster Recovery

- 18.1. Vendor shall use its best efforts to restore all support systems and data files as soon as possible in the event of a disaster and shall be able to process all transactions within seventy-two (72) hours of such disaster.
- 18.2. Vendor shall be solely responsible for all costs associated with rebuilding or recovering all Payment Screens, records and related information that existed prior to the disaster. Vendor's Disaster Recovery Plan is attached as Schedule C.

## 19. Settlement and Authentication

- 19.1. Funds will be settled through an electronic deposit of gross receipts to the specified Purchaser bank account(s). Vendor's system will identify Purchaser funds the next Business Day following the transaction. Vendor will provide daily settlement to Purchaser such that the proceeds from the payment and credit records are deposited into the specified Purchaser bank account(s) no later than 24 hours after the payment and credit records are identified as Purchaser funds. The primary method of transfer shall be through the Automated Clearing House (ACH).
- 19.2. DIS and Purchaser acknowledge that Purchaser is the ACH Originator for the Vendor's Services.
- 19.3. Vendor shall not be liable for data entry errors of Payor or Purchaser, or ACH returns.
- 19.4. Purchaser is responsible for providing data that will meet commercially reasonable criteria for authenticating Payor via a secure session variable. Vendor will authenticate Payor for purposes of the transaction by requiring Payor to re-enter this data prior to allowing Payor to authorize payment. Purchaser shall be responsible for ensuring that the links to Vendor's Services embedded in Purchaser's Web Site take Payor to the appropriate areas within Vendor's Site, provide the agreed-upon data concerning Payor, and meet the agreed-upon encryption and security methods during the exchange.

## **20. Risk of Loss and Surety Bond**

- 20.1. Vendor will be responsible for full risk of loss for any funds received for payments on behalf of Purchasers until deposited to the specified Purchaser bank account(s).
- 20.2. Vendor must provide proof of purchase of a bond from a licensed surety, A-7 or better, naming DIS as the beneficiary and documenting an extent of liability coverage initially in the amount of \$1 million. Such coverage shall remain in effect throughout the term of this Master Contract and any optional years. The amount of the bond will be reviewed periodically, no less than annually, to ensure adequate protection of Purchaser funds. Vendor will increase its liability coverage to the amount determined and provide proof of such increased insurance to DIS within ten (10) days of an increase. DIS will require the amount of the bond to be twice the highest one-day transaction dollar amount. Vendor will send monthly reports of the daily transaction dollar amounts to DIS.

## **21. Vendor Commitments, Warranties and Representations**

Any written commitment by Vendor within the scope of this Master Contract shall be binding upon Vendor. Failure of Vendor to fulfill such a commitment may constitute breach and shall render Vendor liable for damages under the terms of this Master Contract or any SWO. For purposes of this section, a commitment by Vendor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Vendor in its Response or contained in any Vendor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

## **22. Protection of Purchaser's Confidential Information**

- 22.1. Vendor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Master Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, bank routing numbers, checking account numbers, other bank account information, driver's license numbers, medical data, law enforcement records, Purchaser source code or object code, Purchaser security data, or any payment or financial data associated with the Internet Check Payment Services.
- 22.2. Vendor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Master Contract, to release it only to authorized employees, Subcontractors, affiliates, agents, attorneys, auditors or regulators requiring such information for the purposes of carrying out this Master Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Vendor agrees to release such information or material only to employees, Subcontractors, affiliates, agents, attorneys, auditors or regulators who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Vendor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

- 22.3. Immediately upon expiration or termination of this Master Contract or any SWO, Vendor shall, at DIS' or Purchaser's option: (i) certify to DIS or Purchaser that Vendor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps DIS or Purchaser requires of Vendor to protect Purchaser's Confidential Information.
- 22.4. Vendor shall maintain a log documenting the following: the Confidential Information received in the performance of this Master Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Vendor's records shall be subject to inspection, review or audit in accordance with **Review of Vendor's Records**.
- 22.5. DIS and Purchasers reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Vendor through this Master Contract and any SWO. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 22.6. Violation of this section by Vendor or its Subcontractors may result in termination of this Master Contract or any SWO, and demand for return of all Confidential Information, monetary damages, or penalties.

## **Contract Administration**

### **23. Legal Notices**

- 23.1. Any notice or demand or other communication required or permitted to be given under this Master Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid or sent by facsimile transmission, to the parties at the addresses or facsimile phone numbers provided in this section. For purposes of complying with any provision in this Master Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

#### **To Vendor at:**

U.S. Bank National Association  
Attn: Sharon Richard

#### **Mailing Address:**

PO Box 720  
Seattle, WA 98111-0720

#### **Street Address:**

1420 Fifth Avenue,  
Suite 1100  
Seattle, WA 98111

Phone: 206-344-4441

Fax: 206-344-4598

E-mail: [sharon.richard@usbank.com](mailto:sharon.richard@usbank.com)

#### **and at:**

U.S. Bank National Association  
Attn: Susan Keitges

#### **Mailing Address:**

PO Box 720  
Seattle, WA 98111-0720

#### **Street Address:**

1420 Fifth Avenue,  
Suite 1100  
Seattle, WA 98111

Phone: 206-344-4442

Fax: 206-344-4598

E-mail: [susan.keitges@usbank.com](mailto:susan.keitges@usbank.com)

**To DIS at:**

State of Washington  
Department of Information Services  
**Attn: TSD Contract Administrator**

<b>Mailing Address:</b>	<b>Street Address:</b>
PO Box 42445 Olympia, WA 98504	2411 Chandler Court SW Olympia, WA 98502

Phone: 360-725-4200  
Fax: 360-664-0711  
E-mail: [mcadmin@dis.wa.gov](mailto:mcadmin@dis.wa.gov)

or to **Purchaser** at the name, address and phone numbers provided on Purchaser's SWO.

- 23.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
- 23.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this Master Contract or any SWO is served upon Vendor, DIS or Purchasers, such party agrees to notify the other parties in the most expeditious fashion possible following receipt of such subpoena or other legal process. Vendor, DIS and Purchasers further agree to cooperate with the other parties in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

**24. DIS Contract Administrator**

DIS shall appoint the TSD Contract Administrator as the DIS Contract Administrator for this Master Contract who will provide oversight of the activities conducted hereunder. The DIS Contract Administrator will manage this Master Contract on behalf of DIS and will be the principal contact for Vendor concerning Vendor's performance under this Master Contract.

**25. Vendor Account Manager**

Vendor shall appoint an Account Manager for this Master Contract who will be the principal point of contact for DIS Contract Administrator concerning Vendor's performance under this Master Contract. The Vendor Account Manager will also serve as the focal point for business matters and administration activities. Vendor shall notify DIS Contract Administrator and Purchaser Project Managers, in writing, when there is a new Vendor Account Manager assigned to this Master Contract. Vendor's Account Manager is Sharon Richard, see Section 23 for contact information.



**26. Vendor Project Manager**

Vendor shall appoint a Project Manager for each SWO. The designated Project Manager will coordinate and oversee Vendor's Services to Purchaser. Vendor Project Manager will be Purchaser's contact for resolving issues, monitoring, and reporting on the status of the Services.

**27. Purchaser Project Manager**

Purchaser shall appoint a Project Manager for each SWO. The designated Project Manager will be the primary contact with Vendor's designated Project Manager for the Services provided under the applicable SWO.

**28. Section Headings, Incorporated Documents and Order of Precedence**

28.1. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.

28.2. Each of the documents listed below is, by this reference, incorporated into this Master Contract as though fully set forth herein.

- a) Schedules A, B, C;
- b) RFP dated January 30, 2002;
- c) Vendor's Response to DIS RFP dated February 26, 2002;
- d) Any SWO entered into pursuant to this Master Contract;
- e) The terms and conditions contained on Purchaser's purchase documents, if used; and
- f) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Services to Purchaser.

28.3. In the event of any inconsistency in this Master Contract, the inconsistency shall be resolved in the following order of precedence:

- a) Applicable federal and state statutes, laws, and regulations;
- b) Sections of this Master Contract;
- c) Schedules to this Master Contract;
- d) DIS RFP dated January 30, 2002;
- e) Any SWO entered into pursuant to this Master Contract;
- f) Vendor's Response to DIS RFP dated February 26, 2002;
- g) The terms and conditions contained on Purchaser's order documents, if used; and
- h) All Vendor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Vendor made available to Purchaser and used to effect the sale of Services to Purchaser.

**29. Entire Agreement**

This Master Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Vendor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties

not contained in this Master Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Master Contract will be effective without the written consent of both parties.

**30. Authority for Modifications and Amendments**

No modification, amendment, alteration, addition, or waiver of any section or condition of this Master Contract shall be effective or binding unless it is in writing and signed by DIS and Vendor. Only DIS, not other Purchasers, shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Master Contract.

**31. Additional Services**

Additional Services and/or Products, which are determined by DIS to be appropriate to the scope of this Master Contract, may be added to this Master Contract (Schedule A) by an instrument in writing, signed by both Vendor and DIS. Such writing shall include a specific description of the additional Services and/or Products, pricing, and additional terms and conditions as relevant.

**32. Independent Status of Vendor**

In the performance of this Master Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Master Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Vendor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

**33. Governing Law**

This Master Contract shall be governed in all respects by the law and statutes of the state of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the state of Washington, said statute will not govern any aspect of this Master Contract or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

**34. Subcontractors**

Vendor may, with prior written permission from the DIS Contract Administrator, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Vendor's duties and obligations. DIS hereby consents to Vendor's subcontracting with Anexsys, LLC, and Centrax Corporation. In no event shall the existence of a subcontract operate to release or reduce the liability of Vendor to Purchaser for any breach in the performance of Vendor's duties. For purposes of this Master Contract, Vendor agrees that all Subcontractors shall be held to be agents of Vendor. Vendor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employee, or violations of the

**Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, and Ownership/Rights in Data** sections of this Master Contract occasioned by the acts or omissions of Vendor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification, Protection of Purchaser's Confidential Information, Ownership/Rights in Data, Publicity and Review of Vendor's Records** sections of this Master Contract shall apply to all Subcontractors.

### **35. Assignment**

- 35.1. With the prior written consent of DIS , which consent shall be at DIS' sole option, Vendor may assign this Master Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Vendor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to DIS and Purchasers that may arise from any breach of the sections of this Master Contract, SWOs, or warranties made herein including but not limited to, rights of setoff.
- 35.2. DIS may assign this Master Contract or Purchasers may assign SWOs, to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve DIS or Purchaser of any of their duties and obligations hereunder.

### **36. Publicity**

- 36.1. The award of this Master Contract to Vendor is not in any way an endorsement of Vendor or Vendor's Services by DIS and shall not be so construed by Vendor in any advertising or other publicity materials.
- 36.2. Vendor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this Master Contract and Services furnished by Vendor wherein DIS or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DIS or Purchaser's name therewith may, in DIS' judgment, be inferred or implied. Vendor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS *prior* to such use.
- 36.3. Either Party may use the other Party's name and logo (except for the State seal) in advertising, sales promotion, and other publicity materials relating to this Master Contract, without royalty, provided that this Master Contract and the relationship between the parties is not misrepresented. Any use of Vendor's logo shall inure to the benefit of Vendor.

### **37. Review of Vendor's Records**

- 37.1. Vendor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Master Contract and SWOs, including but not limited to Minority and Women's Business Enterprise participation, protection and use of Purchaser's Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Master Contract and SWOs. Vendor shall retain all such records for six (6) years after the expiration or termination of this Master Contract and SWOs.

Records involving matters in litigation related to this Master Contract and SWOs shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Master Contract and any SWO, whichever is later.

- 37.2. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the DIS' Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Master Contract's term, Vendor shall provide access to these items within Thurston County. Vendor shall be responsible for any audit exceptions or disallowed costs incurred by Vendor or any of its Subcontractors.
- 37.3. Vendor shall incorporate in its subcontracts this section's records retention and review requirements.
- 37.4. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to Vendor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from Purchaser's review unless the cost or any other material issue under this Master Contract or SWOs is calculated or derived from these factors.

### **38. Right of Inspection**

Vendor shall provide right of access to its facilities to DIS and Purchaser, or any of DIS' or Purchaser's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Master Contract and any SWO.

## **General Provisions**

### **39. Patent and Copyright Indemnification**

- 39.1. Vendor, at its expense, shall defend, indemnify, and save DIS and Purchaser harmless from and against any claims against the DIS or Purchaser that any Services or Work Product supplied hereunder, or Purchasers' use of the Services or Work Product within the terms of this Contract and any SWO, infringe any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Vendor shall pay resulting penalties, costs, damages and attorneys' fees finally awarded provided that DIS or Purchaser:
  - a) Promptly notify Vendor in writing of the claim, but DIS' or Purchaser's failure to provide timely notice shall relieve Vendor from its indemnification obligations only if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Vendor; and
  - b) Cooperate with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Vendor sole control of the defense and all related settlement negotiations.

- 39.2. Vendor will pay all costs of such defense and settlement and any costs and damages awarded by a court or incurred by DIS or Purchasers. If such claim has occurred, or in Vendor's opinion is likely to occur, DIS and Purchasers agree to permit Vendor, at its option and expense, either to procure for Purchasers the right to continue using the Services or to replace or modify the same so that they become non-infringing and functionally equivalent.

#### **40. Save Harmless**

Vendor shall defend, indemnify, and save DIS and Purchaser harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions of Vendor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents. Vendor's obligation to defend, indemnify, and save DIS and Purchaser harmless shall not be eliminated or reduced by any alleged concurrent Purchaser negligence. This Save Harmless provision supercedes any limitation of liability in this Master Contract.

#### **41. Insurance**

- 41.1. Vendor shall, during the term of this Master Contract and any SWO, maintain in full force and effect, the insurance described in this section. Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Master Contract, Vendor shall provide written notice of such to DIS Contract Administrator within ten (10) Business Day of Vendor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this Master Contract's termination.
- 41.2. The minimum acceptable limits shall be as indicated below, with deductibles allowed only as indicated, for each of the following categories:
- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
  - b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident/\$2 million general aggregate;
  - c) Employer Liability insurance covering the risks of Vendor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease, and at least \$2 million aggregate;
  - d) Umbrella policy providing excess limits over the primary policies in an amount not less than \$3 million;

- e) Professional Liability Errors and Omissions, with a deductible not to exceed \$250,000, conditioned upon subsection 41.3 below, and coverage of not less than \$1 million per occurrence/\$2 million general aggregate; and
  - f) Crime Coverage with a deductible not to exceed \$1 million, conditioned upon subsection 41.3 below, and coverage of not less than \$5 million single limit per occurrence and \$10 million in the aggregate, which shall at a minimum cover occurrences falling in the following categories: Computer Fraud; Forgery; Money and Securities; and Employee Dishonesty.
- 41.3. For Professional Liability Errors and Omissions coverage and Crime Coverage, Vendor shall continue such coverage for three (3) years beyond the expiration or termination of this Master Contract and any SWO, naming DIS as an additional insured and providing DIS with certificates of insurance on an annual basis.
- 41.4. Vendor shall pay premiums on all insurance policies. Such insurance policies shall name DIS as an additional insured on all general liability and umbrella policies. Such policies shall also reference this Master Contract number T02-MST-001 and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer. In addition, Vendor shall provide the DIS Contract Administrator at least thirty (30) calendar days notice of any substantial changes that Vendor makes to any insurance coverage hereunder.
- 41.5. All insurance provided by Vendor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by DIS and shall include a severability of interests (cross-liability) provision.
- 41.6. Vendor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Vendor's liability or responsibility.
- 41.7. Vendor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this Master Contract's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at DIS' sole option, result in this Master Contract's termination.
- 41.8. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Vendor. Such coverage and limits shall not limit Vendor's liability under the indemnities and reimbursements granted to Purchasers in this Master Contract.

## **42. Industrial Insurance Coverage**

Prior to performing work under this Master Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Master Contract. Neither DIS nor Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Master Contract.

**43. Licensing Standards**

Vendor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements and standards necessary in the performance of this Master Contract. (See, for example, chapter 19.02 RCW for state licensing requirements and definitions.)

**44. Antitrust Violations**

Vendor and DIS recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Vendor hereby assigns to Purchaser any and all claims for such overcharges as to goods and Services purchased in connection with this Master Contract, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the Price under this Master Contract.

**45. Compliance with Civil Rights Laws**

During the performance of this Master Contract, Vendor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Vendor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Master Contract may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Vendor may be declared ineligible for further contracts with DIS and Purchasers.

**46. Severability**

If any term or condition of this Master Contract or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Master Contract are declared severable.

**47. Waiver**

Waiver of any breach of any term or condition of this Master Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Master Contract shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

**48. Treatment of Assets**

48.1. Title to all property furnished by Purchaser shall remain with Purchaser. Title to all property furnished by Vendor, for which Vendor is entitled to reimbursement, other than rental payments, under this Master Contract, shall pass to and vest in Purchaser pursuant to the **Ownership/Rights in Data** section. As used in this section **Treatment of Assets**, if the "property" is Vendor's proprietary, copyrighted, patented, or trademarked works, only the applicable license, not title, is passed to and vested in Purchaser.

48.2. Any Purchaser property furnished to Vendor shall, unless otherwise provided herein or approved by Purchaser, be used only for the performance of this Master Contract.

- 48.3. Vendor shall be responsible for any loss of or damage to property of Purchaser that results from Vendor's negligence or that results from Vendor's failure to maintain and administer that property in accordance with sound management practices.
- 48.4. Upon loss or destruction of, or damage to any Purchaser property, Vendor shall notify Purchaser thereof and shall take all reasonable steps to protect that property from further damage.
- 48.5. Vendor shall surrender to Purchaser all Purchaser property prior to completion, termination, or cancellation of this Master Contract.
- 48.6. All reference to Vendor under this section shall also include Vendor's employees, agents, or Subcontractors.

#### **49. Vendor's Proprietary Information**

Vendor acknowledges that DIS is subject to chapter 42.17 RCW and that this Master Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Vendor to be Proprietary Information must be clearly identified as such by Vendor. To the extent consistent with chapter 42.17 RCW, DIS shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Vendor's Proprietary Information, DIS will notify Vendor of the request and of the date that such records will be released to the requester unless Vendor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Vendor fails to obtain the court order enjoining disclosure, DIS will release the requested information on the date specified.

### **Disputes and Remedies**

#### **50. Disputes**

- 50.1. In the event a bona fide dispute concerning a question of fact between Purchaser and Vendor and it cannot be resolved between the parties or with the assistance of the DIS Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 50.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. A copy shall be sent to the DIS Contract Administrator. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.
  - a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.
  - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
  - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.



- 50.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 50.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.
- 50.5. Purchaser and Vendor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Master Contract that are not affected by the dispute.
- 50.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Vendor, Vendor shall continue providing Services pending resolution of the dispute provided Purchaser pays Vendor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Vendor, in good faith, believes is due and payable.

#### **51. Attorneys' Fees and Costs**

- 51.1. If any litigation is brought to enforce any term, condition, or section of this Master Contract or SWO, or as a result of this Master Contract or SWO in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.
- 51.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

#### **52. Non-Exclusive Remedies**

The remedies provided for in this Master Contract shall not be exclusive but are in addition to all other remedies available under law.

#### **53. Liquidated Damages**

- 53.1. Liquidated Damages – General
  - a) In some instances any delay by Vendor in meeting the delivery date set forth in a SWO will interfere with the proper implementation of Purchaser's programs and will result in loss and damage to Purchaser. In those instances Purchaser, at its sole option, may include a liquidated damages clause in its SWO.
  - b) As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, Purchaser and Vendor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the SWO and the parties agree that Vendor shall pay such amounts as liquidated damages and not as a penalty.
  - c) Liquidated damages provided under the terms of this Master Contract and any SWO are subject to the same limitations as provided in the section titled **Limitation of Liability**.

53.2. Liquidated Damages – Specific

The specific liquidated damage amounts and timelines will be set forth in the SWO. (See Schedule B – *Supplemental Work Order Template*.)

**54. Failure to Perform**

If Vendor fails to perform any substantial obligation under this Master Contract or a SWO, Purchaser shall give Vendor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of the written notice Vendor still has not performed, then Purchaser may withhold all monies due and payable to Vendor, without penalty to Purchaser, until such Failure to Perform is cured or otherwise resolved.

**55. Limitation of Liability**

- 55.1. The parties agree that Vendor, DIS and Purchaser shall not be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Master Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled **Termination for Default and Review of Vendor's Records** are not consequential, incidental, indirect, or special damages as that term is used in this section.
- 55.2. Vendor, DIS and Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of either Vendor, DIS or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than DIS and Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Vendor, DIS, Purchaser, or their respective Subcontractors.
- 55.3. If delays are caused by a Subcontractor without its fault or negligence, Vendor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Vendor to meet its required performance schedule.
- 55.4. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

## Contract Termination

### 56. Termination for Default

- 56.1. If Vendor violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its material obligations under this Master Contract, then the DIS Contract Administrator or Purchaser shall give Vendor written notice of such failure or violation, and the failure or violation shall be corrected by Vendor within thirty (30) calendar days or as otherwise mutually agreed. If such breach is not capable of cure within thirty (30) days, Vendor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Vendor's failure or violation is not corrected, Purchaser or DIS, at its option, may pursue immediate termination of a SWO or this Master Contract, as appropriate. In such event, this Master Contract may be terminated immediately by written notice from the DIS Contracting Officer to Vendor, or Purchaser's or DIS' SWO may be terminated by written notice to Vendor.
- 56.2. In the event of termination of this Master Contract by DIS, DIS shall have the right to procure the Services that are the subject of this Master Contract on the open market and Vendor shall be liable for all damages, including, but not limited to: (i) the cost difference between the original Master Contract price for the Services and the replacement costs of such Services acquired from another Vendor; (ii) if applicable, all administrative costs directly related to the replacement of this Master Contract, such as costs of competitive bidding, mailing, advertising, applicable fees, charges or penalties, staff time costs; and, (iii) any other direct costs to DIS resulting from Vendor's breach. DIS and Purchasers shall have the right to deduct from any monies due to Vendor, or that thereafter become due, an amount for damages that Vendor will owe DIS and Purchasers for Vendor's default.
- 56.3. If either DIS or Purchaser violates any material term or condition of this Master Contract or fails to fulfill in a timely and proper manner its obligations under this Master Contract, then Vendor shall give DIS or Purchaser, as appropriate, written notice of such failure, which shall be corrected by DIS or Purchaser within thirty (30) calendar days, or as otherwise mutually agreed. If such failure to perform is not so corrected, Purchaser's SWO may be terminated by written notice from Vendor to Purchaser or, if appropriate, this Master Contract may be terminated by written notice from Vendor to DIS.
- 56.4. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.
- 56.5. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

### 57. Termination for Convenience

- 57.1. When, at the sole discretion of DIS, it is in the best interest of the State, the DIS Contracting Officer may terminate this Master Contract, in whole or in part, by fourteen (14) calendar days written notice to Vendor.

57.2. When, at the sole discretion of Purchaser, it is in the best interest of Purchaser, Purchaser may terminate its SWO(s), in whole or in part, by fourteen (14) calendar days written notice to Vendor. If an SWO is so terminated, Purchasers are liable only for payments required by the terms of any SWO for Services received and accepted by Purchaser prior to the effective date of termination.

**58. Termination for Withdrawal of Authority**

In the event that DIS' or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Master Contract or any SWO and prior to normal completion, DIS may terminate this Master Contract, or a Purchaser may terminate its SWO(s), by seven (7) Business Days written notice to Vendor. No penalty shall accrue to DIS and Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its SWO(s) in order to acquire similar Services from a third party.

**59. Termination for Non-Allocation of Funds**

If funds are not allocated to DIS or a Purchaser to continue this Master Contract or SWO in any future period, DIS may terminate this Master Contract, or Purchaser may terminate its SWO(s) by seven (7) Business Days written notice to Vendor or otherwise work with Vendor to arrive at a mutually acceptable resolution of the situation. DIS or Purchasers will not be obligated to pay any further charges for Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DIS or Purchaser agrees to notify Vendor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to DIS or Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this Master Contract, or a Purchaser to terminate its SWO(s) in order to acquire similar Services from a third party.

**60. Termination for Conflict of Interest**

DIS may terminate this Master Contract, or Purchaser its SWO(s), by written notice to Vendor if DIS or Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Master Contract or any SWO is so terminated, DIS and Purchasers shall be entitled to pursue the same remedies against Vendor as it could pursue in the event Vendor breaches this Master Contract or any SWO.

**61. Termination Procedure**

61.1. Upon termination of this Master Contract or any SWO, DIS and Purchaser, in addition to any other rights provided in this Master Contract and applicable SWO, may require Vendor to deliver to Purchaser any property or Work Product specifically produced or acquired for the performance of such part of this Master Contract or SWO as has been terminated. The section titled **Treatment of Assets** shall apply in such property transfer.

- 61.2. Unless otherwise provided herein, Purchaser shall pay to Vendor the agreed-upon Price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Vendor an amount greater than Vendor would have been entitled to if this Master Contract or SOW had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this Master Contract. Purchaser may withhold from any amounts due Vendor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.
- 61.3. Vendor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Vendor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full..

## **62. Transition Cooperation**

Upon termination of this Master Contract or any SOW for any reason, Vendor shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of the Services to another supplier of Services. Vendor shall provide full disclosure to DIS and Purchasers about the equipment, software, and other essentials required to perform the Services for DIS and Purchasers. Vendor shall transfer licenses or assign agreements for any software or third-party services used to provide the Services to Purchaser.

## **Activity Reporting and Administration Fee**

### **63. Master Contract Administration Fee**

- 63.1. All purchases made under this Master Contract are subject to a Master Contract Administration Fee, collected by Vendor and remitted to DIS.
- 63.2. The Master Contract Administration Fee is one half of one percent (0.5% or 0.005) of the purchase price. The purchase price is defined as total invoice price less sales tax.
- 63.3. The Master Contract Administration Fee shall be invoiced by Vendor to all Purchasers as a separate detail line item on each Purchaser's invoice.
- 63.4. Vendor shall remit the Master Contract Administration Fee directly to the DIS Contract Administrator along with the Master Contract Activity Report.

### **64. Master Contract Activity Reporting**

- 64.1. Vendor shall submit to the DIS Contract Administrator a monthly Activity Report of all Services purchased under this Master Contract. The report shall identify:
- a) This Master Contract number, T02-MST-001;
  - b) Each Purchaser making purchases during that month;
  - c) The total invoice price, excluding sales tax, for each Purchaser;
  - d) The sum of all invoice prices, excluding sales tax, for all Purchasers; and
  - e) The Master Contract Administrative Fee.

- 64.2. The Activity Report and the Master Contract Administration Fee shall be submitted by the 15<sup>th</sup> calendar day of the month following the month in which Vendor invoiced Purchaser. Vendor shall submit his report according to the layout specified by the DIS Contract Administrator.
- 64.3. This report may be corrected or modified by the DIS Contract Administrator with subsequent notice to the Vendor.
- 64.4. Monthly reports are required even if no activity occurred.

**65. Transaction Volume Reports**

Vendor shall send monthly reports of the daily transaction volumes to the DIS Contract Administrator by the 15<sup>th</sup> calendar day of the month following the month in which the transactions occurred.

**66. Failure to Remit Reports/Fees**

- 66.1. Failure of Vendor to remit the Transaction Volume Report or the Master Contract Activity Report together with the Master Contract Administrative Fee may be considered a failure to perform on the part of the Vendor, which may result in DIS terminating the Master Contract with the Vendor.
- 66.2. Failure of any Purchaser to pay the Master Contract Administrative Fee may result in a Purchaser forfeiting its right to purchase from this Master Contract. Vendor shall notify DIS Contract Administrator when any Purchaser fails to pay the Master Contract Administration Fee.
- 66.3. The DIS Contract Administrator will notify Vendor of any Purchaser who has forfeited its right to purchase under this Master Contract. After such notification, any sale by Vendor to a forfeiting Purchaser may be considered failure to perform by Vendor.
- 66.4. If the performance issues are resolved, DIS, at its option, may reinstate a Vendor's participation or a Purchaser's right to purchase.

## Contract Execution

### 67. Authority to Bind

The signatories to this Master Contract represent that they have the authority to bind their respective organizations to this Master Contract.

### 68. Counterparts

This Master Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Master Contract signed by each party, for all purposes.

*In Witness Whereof*, the parties hereto, having read this Master Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

#### Approved

State of Washington  
Department of Information Services

Michael D. McVicker  
Signature

Michael D. McVicker 6/14/02  
Print or Type Name Date

Asst. Director  
Title

#### Approved

U.S. Bank National Association

Sharon K. Richard  
Signature

Sharon K. Richard 6/11/02  
Print or Type Name Date

Vice President  
Title

#### Approved as to Form

State of Washington  
Office of the Attorney General

Chip Holcomb  
Signature

CHIP HOLCOMB  
Print or Type Name

Assistant Attorney General 6/7/02  
Title Date

#### Vendor Information

Vendor's UBI Number: 601-658491

Minority or Woman Owned Business Enterprise

Yes \_\_\_\_\_ No ☒ X  
(Certification Number)

# **Schedule A**

## ***Authorized Product and Price List***

**Master Contract No. T02-MST-001**

**With**

**US Bank National Association**

**\*\*Please review Price link for current information.**



**Amendment 03-01**  
**Master Contract T02-MST-001**  
for  
Internet Check Payment Services

---

In accordance with Section 30 (*Authority for Modifications and Amendments*) of Master Contract Number T02-MST-001 ("Master Contract"), this Amendment 03-01 is entered into by and between the State of Washington, **Department of Information Services** ("DIS") and **U.S. Bank National Association** ("Vendor" or "U.S. Bank").

The purpose of this Amendment is to add a new pricing option (Option II Pricing, Convenience Fees) and make the resulting modifications to other Master Contract sections, modify the Activity Reporting and make several miscellaneous corrections to the Master Contract.

The parties agree to amend the Master Contract as follows:

1. In Section 11 (*Services and Supplemental Work Order*) Subsection 11.2 (g) is modified to read as follows:
  - g) Indicate whether Pricing Option I or II is to be used and whether co-branding will be allowed;
2. In Section 17 (*Services Availability and Out-of-Service Credits*) Subsection 17.4 is deleted in its entirety and replaced with the following:

17.4 Vendor shall provide Purchaser with an **Out-of-Service Credit** for every Out-of-Service Condition for each Application, to be applied in the month following the occurrence. For Purchasers using Option I Pricing, the Out-of-Service Credit shall be an amount equal to 1/30<sup>th</sup> of the monthly charge for the Application affected by the Out-of-Service Condition for the month prior to the month in which the outage occurred. For Purchasers using Option II Pricing, the Out-of-Service Credit shall be an amount equal to 1/30<sup>th</sup> of the monthly amount of Convenience Fees collected by Vendor for the Application affected by the Out-of-Service Condition for the month prior to the month in which the outage occurred. Vendor shall either credit Purchaser or provide payment to Purchaser by the end of the month following the month in which the Out-of-Service Condition occurred.
3. In Section 19 (*Settlement and Authentication*) Subsection 19.1 is modified by deleting the first sentence and adding language so that it reads as follows:

19.1 If Purchaser has selected Pricing Option I, funds will be settled through an electronic deposit of gross receipts to the specified Purchaser bank account(s). If Purchaser has selected Pricing Option II, funds will be settled through an electronic deposit of Purchaser's receipts to the specified Purchaser bank

account(s). Funds collected for Convenience Fees shall be settled directly to Vendor's specified bank account. Vendor's system will identify Purchaser funds the next Business Day following the transaction. Vendor will provide daily settlement to Purchaser such that the proceeds from the payment and credit records are deposited into the specified Purchaser bank account(s) no later than 24 hours after the payment and credit records are identified as Purchaser funds. The primary method of transfer shall be through the Automated Clearing House (ACH)

4. In Section 20 (*Risk of Loss and Surety Bond*) the last sentence (*Vendor will send monthly reports of the daily transaction dollar amounts to DIS.*) is deleted. [See changes to Section 65 (*Transaction and Volume Reports*) below.]
5. In Section 41 (*Insurance*), in Subsection 41.2(f), the deductible amount for the Crime Coverage Insurance is adjusted to \$5 million.
6. In Section 42 (*Industrial Insurance Coverage*) the word "not" is removed from the second sentence so that the section now reads as follows:

Prior to performing work under this Master Contract, Vendor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Master Contract. Neither DIS nor Purchaser will be responsible for payment of industrial insurance premiums or for any other claim or benefit for Vendor, or any Subcontractor or employee of Vendor, which might arise under the industrial insurance laws during the performance of duties and services under this Master Contract.

7. Section 63 (*Master Contract Administration Fee*) is deleted in its entirety and replaced with the following:

**63. Master Contract Administration Fee**

63.1 All purchases made under this Master Contract are subject to a Master Contract Administration Fee, collected by Vendor and remitted to DIS.

63.2 The Master Contract Administration Fee is defined as either:

- a) one half of one percent (0.5% or 0.005) of the purchase price. The purchase price is defined as total invoice price less sales tax; and/or
- b) one half of one percent (0.5% or 0.005) of the total monthly Convenience Fees collected by Vendor for use of Purchaser Applications under this Master Contract.

63.3 When the Master Contract Administration Fee is based on the purchase price, the Master Contract Administration Fee shall be invoiced by Vendor as a separate line item on each Purchaser's invoice.

63.3 Vendor shall remit the total Master Contract Administration Fees directly to the DIS Contract Administrator along with the Master Contract Activity Report, as set forth in Section 64 **Master Contract Activity Reporting**.

8. Section 64 (*Master Contract Activity Reporting*) is deleted in its entirety and replaced with the following:

**64. Master Contract Activity Reporting**

64.1 Vendor shall submit to the DIS Contract Administrator a quarterly Activity Report of all Services purchased under this Master Contract. The report shall identify:

- a) This Master Contract number, T02-MST-001;
- b) Each Purchaser making purchases during that quarter;
- c) The monthly transaction volumes for each Purchaser and the total monthly transaction volumes for all Purchasers;
- d) The total invoice price, excluding sales tax, for each Purchaser using Option I Pricing;
- e) The total Convenience Fees collected by Vendor, excluding sales tax, for each Purchaser using Option II Pricing;
- f) The sum of all invoice prices, excluding sales tax, for all Purchasers using Option I Pricing;
- g) The sum of all Convenience Fees, excluding sales tax, for all Purchasers using Option II Pricing; and
- h) The Master Contract Administration Fee.

64.2 The Activity Report and the Master Contract Administration Fee shall be submitted by the 15<sup>th</sup> calendar day of the month following the end of the reporting quarter as follows:

<u>Activity Period</u>	<u>Report Due</u>
January, February, March	April 15 <sup>th</sup>
April, May, June	July 15 <sup>th</sup>
July, August, September	October 15 <sup>th</sup>
October, November, December	January 15 <sup>th</sup>

64.3 In the event the Master Contract Administration Fee is less than Fifty Dollars (\$50.00), Vendor may delay the payment until such Reporting Due Date that the cumulative Fee equals or exceeds Fifty Dollars (\$50.00).

64.4 Vendor shall submit this report according to the layout specified by the DIS Contract Administrator. This report may be corrected or modified by the DIS Contract Administrator with subsequent notice to the Vendor.

64.5 Quarterly reports are required even if no activity occurred.

9. Section 65 (*Transaction Volume Reports*) is deleted in its entirety and replaced with the following:

**65. Transaction Dollar Amount Reports**

When requested by DIS, Vendor shall report the highest one-day transaction dollar amount for each month along with the Activity Report to the DIS Contract Administrator. Vendor shall also make reports of the daily transaction dollar amounts available to the DIS Contract Administrator upon request.

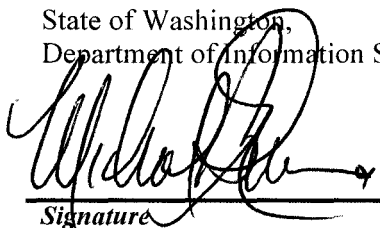
10. Schedule A (*Authorized Services and Price List*) is deleted in its entirety and replaced with the attached Schedule A, dated January 2003.
11. Schedule B (*Supplemental Work Order Template*) is deleted in its entirety and replaced with the attached Schedule B, dated January 2003.

All other sections of Master Contract T02-MST-001 shall remain in full force and effect.

This Amendment 03-01 shall be effective as of the date signed by DIS.

**Approved**

State of Washington,  
Department of Information Services

  
\_\_\_\_\_  
Signature

Michael B. Emans

\_\_\_\_\_  
Print or Type Name

Assistant Director

\_\_\_\_\_  
Title

3/14/03  
\_\_\_\_\_  
Date

**Approved**

U.S. Bank National Association

  
\_\_\_\_\_  
Signature

Sharon K. Richard

\_\_\_\_\_  
Print or Type Name

Vice President 3/12/03  
\_\_\_\_\_  
Title Date

Schedule B  
*Supplemental Work Order Template*

Revised March 2003

**Instructions to Purchasers for using this form:**

This template has been drafted to facilitate the process of establishing a Supplemental Work Order (SWO) between Purchaser and Vendor.

On this SWO Template, instructions appear in brackets [ ] in red italics. Vendor and Purchaser will need to provide information and/or draft text where indicated in red.

The Master Contract T02-MST-001 contains terms and conditions pertinent to the work between Purchaser and Vendor. Purchaser should take the time to become familiar with the terms and conditions of the Master Contract that affect the business relationship with Vendor for the work that Vendor is to perform and keep a copy of the Master Contract and Schedules in effect at the time of entering into a SWO. The Master Contract contains additional Vendor duties and obligations other than the selected terms and conditions restated in the SWO Template. The terms and conditions of the Master Contract are incorporated into and control the terms and conditions of the SWO. The Master Contract can be found with the E-Commerce Master Contracts on the Technology Mail ([techmall.dis.wa.gov](mailto:techmall.dis.wa.gov)).

Purchaser may want to assign a number to the SWO in accordance with Purchaser's contract numbering system.

Purchaser's SWO does not need to be sent to or approved by DIS.

A single Set-Up will support reporting for multiple payment types if Purchaser includes an identifier in the session variable or Payor entry fields that differentiates the payment types.

Vendor will provide Purchaser the ability to link to Vendor-hosted Payment Screens in order to process Internet Check Payment Services payments.

*[Indicate whether Purchaser will use the Standard Payment Screen Template and pay the Set-up Fee only, or use the Customized Payment Screens and pay the Set-up Fee plus Vendor's Hourly Rate for the additional work]*

Purchaser has chosen to use: (choose one of the following)

**Standard Payment Screen Templates** - Vendor-provided Payment Screens that have the look and feel of Access Washington and may be easily adapted, with minor customization (such as logos, names, and banners) for use by multiple Purchasers and/or multiple Applications.

*[Provide the minor customization information required to adapt Purchaser's Application for the Standard Payment Screen Templates.]*

- OR -

**Customized Payment Screens** - Vendor-provided Payment Screens that depart substantially from the Standard Payment Screen Template in graphic design work, corporate identity, navigation, usability, business strategy, structure and functionality, HTML coding and scripting, programming (sophisticated features and advanced functionality, interactivity, dynamic content, databases, etc.), maintenance and promotion.

*[Provide a description of the customizations requested by Purchaser.]*

*[Purchaser must provide the necessary information about Purchaser's Application and infrastructure so that Vendor can complete the Standard or Customized Payment Screens and provide Internet Check Payment Services. If Purchaser chooses the Customized Payment Screens, the details of the customization and Vendor's estimated hours for the work and total price at Vendor's Hourly Rate from the Master Contract must be specified in the SWO.]*

*[Provide a detailed schedule for implementation.]*

All Payment Screens, i.e., Standard Payment Screen Templates or Customized Payment Screens, shall follow the State's Web design guidelines, specifically the *Washington State Web Presentation Guidelines for Digital Government*, including but not limited to: Web site performance, support accessibility by Payors, browser specifications, and page-load specifications. Additional information may be found at:  
<http://www.wa.gov/dis/tools/awstyleguide/index.htm>

Vendor's Payment Screens shall meet or exceed the Priority 1 Checkpoints from the *Web Content Accessibility Guidelines 1.0* developed by the World Wide Web Consortium (W3C), as detailed at: <http://www.w3.org/TR/WCAG10/full-checklist.html>.

In addition, all Vendor Payment Screens must provide a URL link that will allow Payors to view Purchaser's privacy policy and Payor HELP services (e.g., Frequently Asked Questions (FAQs) and answers for common Payor problems).

## 2. Settlement and Authentication

- 2.1 If Purchaser has selected Pricing Option I, funds will be settled through an electronic deposit of gross receipts to the specified Purchaser bank account(s). If Purchaser has selected Pricing Option II, funds will be settled through an electronic deposit of Purchaser's receipts to the specified Purchaser bank account(s). Funds collected for Convenience Fees shall be settled directly to Vendor's specified bank account. Vendor's system will identify Purchaser funds the next Business Day following the transaction. Vendor will provide daily settlement to Purchaser such that the proceeds from the payment and credit records are deposited into the specified Purchaser bank account(s) no later than 24 hours after the payment and credit records are identified as Purchaser funds. The primary method of transfer shall be through the Automated Clearing House (ACH). Vendor's system will identify Purchaser funds the next business day following the transaction. Vendor will provide daily settlement to Purchaser such that the proceeds from the payment and credit records are deposited into the specified Purchaser bank account(s) no later than twenty-four (24) hours after the payment and credit records are identified as Purchaser funds. The method of transfer shall be through the Automated Clearing House (ACH). Funds collected by Vendor shall be deemed to be held in trust by Vendor until the funds are deposited into Purchaser bank account(s).
- 2.2 Purchaser acknowledges that Purchaser is the ACH Originator for the Vendor's Services.
- 2.3 Vendor shall not be liable for data entry errors of Payor or Purchaser.
- 2.4 Purchaser is responsible for providing data that will meet commercially reasonable criteria for authenticating Payor via a secure session variable. Vendor will authenticate Payor for purposes of the transaction by requiring Payor to re-enter this data prior to allowing Payor to authorize the payment. Purchaser shall be responsible for ensuring that the links to the Vendor's Services embedded in Purchaser's Web Site take Payor to the appropriate areas within the Vendor's Site, provide the agreed-upon data concerning Payor, and meet the agreed-upon encryption and security methods during the exchange.

## 3. SWO Term

- 3.1. The initial term for this SWO will be two (2) years. *[Two years is the standard term; Purchaser and Vendor may agree to a shorter term for the SWO.]* This SWO may be renewed for additional terms of up to two (2) years each.
- 3.2. SWOs or renewal SWOs entered into prior to the expiration or other termination of the Master Contract (except **Termination for Default**) may be completed under the Master Contract terms and conditions in effect when the SWO or renewal SWO was entered into. New SWOs or renewal SWOs may not be entered into after the expiration or other termination of the Master Contract.

## 4. Pricing

Vendor agrees to provide the Internet Check Payment Services at the Prices set forth in the *Services Price List* attached as Schedule A to the Master Contract. Prices do not include banking service charges (e.g., account maintenance, account debits, and monthly maintenance fees) related to automatically transferring funds to a Purchaser-specified account. The fees for these banking services are set forth in the Office of State Treasurer's Master Deposit Agreement with

Vendor for State Agency Purchasers; or through individual agreement with Vendor for other (non-State Agency) Purchasers.

## **5. Invoice and Payment**

- 5.1. Vendor will submit properly itemized invoices to Purchaser Project Manager, or other person identified in the SWO Contact Information, and a duplicate invoice to the appropriate contact person identified in each SWO entered into by Purchaser. Invoices shall state and itemize, as applicable:
- a) Master Contract Number, T02-MST-001 and/or Purchaser SWO Number(s);
  - b) Vendor's name, address, phone number, e-mail address, fax, and Federal Taxpayer Identification Number;
  - c) Date that Services were provided;
  - d) Description of Services provided, and, if applicable, the number of hours worked;
  - e) Prices for Services;
  - f) Total purchase price;
  - g) Master Contract Administration Fee (0.5% or 0.005 of the total purchase price); and
  - h) Total invoice Amount.
- 5.2. Payments shall be due and payable within thirty (30) days after the Acceptance Date for such Services or thirty (30) days after receipt of properly prepared invoices, whichever is later.
- 5.3. If Purchaser fails to make timely payment, Vendor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is postmarked within thirty (30) days of the Acceptance Date or receipt of Vendor's properly prepared invoice, whichever is later.

## **6. Vendor's Project Manager**

Vendor shall appoint an Project Manager for this SWO who will provide oversight of Vendor activities conducted hereunder. Vendor's Project Manager will be the principal point of contact for Purchaser concerning Vendor's performance under this SWO and the Master Contract. Vendor shall notify Purchaser's Project Manager, in writing, when there is a new Vendor Project Manager assigned to this SWO.

## **7. Purchaser's Project Manager**

Purchaser designates the person indicated in the SWO Contact Information as the Purchaser's Project Manager, who will coordinate all aspects of the SWO for Purchaser and to whom invoices should be addressed. The Purchaser Project Manager will be the contact for all matters related to this SWO.

## **8. Ownership/Rights in Data**

- 8.1. Vendor shall provide Purchaser with a Pre-existing Internet Check Payment Services product ("Pre-existing Material"). Payment Screens associated with this Pre-existing Material will be customized for the state of Washington Master Contract and for individual SWOs. Such Payment Screens and all coding necessary for the presentation of the Payment Screens via the Internet shall be licensed to the state of Washington or Purchaser, as applicable, on a nonexclusive, perpetual, royalty-free, and irrevocable basis.



Purchaser may publish, transfer, reproduce, deliver, perform, display, and dispose of such Payment Screens and applicable coding, and authorize others to do so except that such license shall be limited to the extent to which Vendor has a right to grant such a license.

- 8.2 Vendor agrees that any custom additions and modifications to its Pre-existing Material and all data and work products produced under this Master Contract and any SWO (collectively called "Work Product") shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 *et seq.*, and shall be owned by Purchaser.
- 8.3 Vendor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights and all information used to formulate such Work Product.
- 8.4. If for any reason the Work Product would not be considered a work made for hire under applicable law, Vendor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.
- 8.5. Vendor shall execute all documents and to perform such other proper acts as Purchaser may deem necessary to secure for Purchaser the rights pursuant to this section.
- 8.6. Vendor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Vendor ownership in any Work Product, without the prior written permission of the Purchaser. Vendor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.
- 8.7. Vendor shall exert all reasonable effort to advise Purchaser at the time of delivery of Pre-existing Material furnished under this SWO, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this SWO. Vendor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Pre-existing Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Vendor with respect to any Pre-existing Material delivered under this SWO. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Pre-existing Material by Vendor.

## **9. Test and Acceptance**

- 9.1. Acceptance testing of the Services shall begin within two (2) business days after notification from Vendor that the Services are available. The acceptance period shall continue for five (5) Business Days.
- 9.2. If the Services are acceptable, i.e., conform to the Specifications, Purchaser will notify Vendor in writing. If the Services are not acceptable, Purchaser shall document the changes required to make the Services acceptable, and provide them to the Vendor within three (3) Business Days of the official notification to Vendor that Services are not acceptable. If after thirty (30) calendar days, the Services still have not been accepted Purchaser may, at its option: (i) declare Vendor to be in breach and terminate the SWO; or, (ii) continue the acceptance testing for an additional thirty (30) calendar days.

## 10. Liquidated Damages (Optional – at Purchaser’s sole discretion)

### 10.1. Liquidated Damages – General

- a) Any delay by Vendor in meeting the delivery date set forth in this SWO will interfere with the proper implementation of Purchaser’s programs and will result in loss and damage to Purchaser.
- b) As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform, Purchaser and Vendor agree that in the event of any such failure(s) to perform, the amount of damage which will be sustained will be the amount set forth in the following subsections and the parties agree that Vendor shall pay such amounts as liquidated damages and not as a penalty.
- c) Liquidated damages provided under the terms of this SWO are subject to the same limitations as provided in the section titled **Limitation of Liability**.

### 10.2. Liquidated Damages – Specific

- a) If Vendor does not provide the Services by the delivery date agreed upon between Purchaser and Vendor, then Vendor shall provide a revised delivery date and pay to Purchaser as fixed and agreed liquidated damages, in lieu of all other damages due to such delay, for each calendar day between the specified delivery date and the date that Vendor actually provides the Services an amount of Five Hundred Dollars (\$500) a day. *[This is an example, Purchaser should determine the amount based on the importance of the timeline to their program needs.]*
- b) If the revised delivery date is more than ten (10) calendar days *[This is an example, Purchaser should determine the amount based on the importance of the timeline to their program needs.]* from the original delivery date, then by written notice to Vendor, Purchaser may immediately terminate the right of Vendor to provide the Services and Purchaser may obtain substitute Services from another vendor. In this event, Vendor shall be liable for fixed and agreed-upon liquidated damages, in lieu of all other damages due to such delay, in the amount specified above, until substitute Services are provided, or a maximum of thirty (30) calendar days *[This is an example, Purchaser should determine the amount based on the importance of the timeline to their program needs.]* from the original delivery date, whichever occurs first.

## 11. Services Availability/Out of Service Credits

- 11.1. Vendor shall immediately notify Purchaser of all system outages and system changes that directly affect Purchaser Applications.
- 11.2. Vendor’s ongoing support services shall be available 24 hours per day, 7 days a week, 365 days a year and shall be operational 99.95 percent (99.95%) of the time during any twenty-four (24) hour period.
- 11.4. Vendor’s inability to deliver its Services to this level, excluding problems due solely to Purchaser’s network or equipment, shall be deemed “Out-of-Service.” Being Out-of-Service for thirty (30) cumulative minutes or more in any 24-hour period constitutes an “Out-of-Service Condition.”
- 11.5. Vendor shall provide Purchaser with an **Out-of-Service Credit** for every Out-of-Service Condition for each Application, to be applied in the month following the occurrence. For Purchasers using Option I Pricing, the Out-of-Service Credit shall be an amount equal to 1/30<sup>th</sup> of the monthly charge for the Application affected by the Out-of-Service Condition for the month prior to the month in which the outage occurred. For Purchasers using Option II Pricing, the Out-Of-Service Credit shall be an amount equal to 1/30<sup>th</sup> of the monthly

amount of Convenience Fees collected by Vendor for the Application affected by the Out-of-Service Condition for the month prior to the month in which the outage occurred. Vendor shall either credit Purchaser or provide payment to Purchaser by the end of the month following the month in which the Out-Of-Service Condition occurred.

**12. Protection of Confidential and Proprietary Information**

Purchaser and Vendor have duties with respect to confidential and proprietary information that are set forth in the Master Contract in Sections 22 (*Protection of Purchaser's Confidential Information*), and 49 (*Vendor's Proprietary Information*). Any additional requirement and types of confidential or proprietary information are set forth here:

[Provide additional information here or state "NOTHING ADDITIONAL" in this space.]

**13. Additional Terms and Conditions Specific to this SWO**

[State additional terms and conditions specific to this SWO not found in Master Contract, if any.]

*In Witness Whereof*, the parties hereto, having read this SWO Number ##### to Master Contract Number T02-MST-001 in its entirety, do agree thereto in each and every particular.

**Approved**

[Purchaser Name]

**Approved**

U.S. Bank National Association

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## SWO Contact Information:

**Purchaser:**

Project Manager Name:

Address:

Phone:

Fax:

Email:

**Vendor:**

Project Manager Name:

Address:

Phone:

Fax:

Email:

Contact Name #2:

Address:

Phone:

Fax:

Email:

Representative Name #2:

Address:

Phone:

Fax:

Email:

Vendor's UBI Number: 601-658491

Minority or Woman Owned Business Enterp

Yes \_\_\_\_\_

No   X  

(Certification Number)

State of Washington Internet Check Payment Services  
Supplemental Work Order Number #####  
Implementation Questionnaire Form

The purpose of this questionnaire is to gather the information necessary to facilitate the implementation of the Internet Check Payment Services for Purchaser's Application(s). Incomplete questionnaires will cause a delay to the set-up process as the implementation process cannot begin until this questionnaire is completed and returned. Your U. S. Bank Sales Representative will assist you in filling out the form.

**Section 1: Purchaser Contact Information**

Purchaser Name:	
Purchaser Address:	
Contact Information :	<p><b><u>Administrative Contact</u></b>  Name  Phone Number  Email Address  Fax Number</p> <p><b><u>Technical Contact</u></b>  Name  Phone Number  Email Address  Fax Number</p>

**Section 2: Account Information**

U.S. Bank Demand Deposit Account: Do you currently have a U.S. Bank demand deposit account that will be used to process and settle I-Check payment transactions?	<input type="checkbox"/> No <input type="checkbox"/> Yes <p><i>Note that a U.S. Bank account is required for ACH origination and settlement, and must be established if not already available.</i></p>
Provide the bank Routing/Transit Number and Account Number for the U.S. Bank Settlement Account.	<p><b><u>Incoming payment and refund transactions</u></b>  Routing/Transit Number  Account Number</p>
If you wish to concentrate funds in an account that differs from the settlement account, provide the bank Routing/Transit number and Account Number	<p>Do you wish to automatically transfer settled funds to a separate concentration account?</p> <input type="checkbox"/> No <input type="checkbox"/> Yes <p><b><u>Concentration Account</u></b>  Routing/Transit Number  Account Number</p> <p><i>Note that this account is not required to be a U.S. Bank account.</i></p>

**Section 3: ACH (Internet Check) Information**

The daily cut-off time for Internet Check payments will be 3:00 p.m. PT unless an earlier time is specified.	<input type="checkbox"/> 3:00 p.m. PT cutoff <input type="checkbox"/> Earlier cutoff:
What is the maximum payment amount you will accept?	
Do you wish to warn Payors who attempt to submit a late payment?	<input type="checkbox"/> No <input type="checkbox"/> Yes Provide the minimum number of days before a payment is due that a Payor must submit their payment:  Provide the warning message you wish to display to Payors attempting to submit a late payment

**Section 4: Data setup**

Will you authenticate Payors and pass information over the internet though a session transfer?	<input type="checkbox"/> No (custom requirements for authentication required) <input type="checkbox"/> Yes			
If yes above, select the fields you will pass	<input checked="" type="checkbox"/> Due Date <input type="checkbox"/> Billing ID <input type="checkbox"/> Payor Authentication ID			
You may pass up to two optional additional fields. Provide information for the fields you will pass.	1. Field Name:                      Field length 2. Field Name:                      Field length			
You may capture up to ten optional additional fields to be entered by the Payor on the Payment Screens. Provide information for the fields you wish to capture.		Label name	Field size (cannot exceed 255 characters)	Required/not required
	1			
	2			
	3			
	4			
	5			
	6			
	7			
	8			
	9			
	10			

### Section 5: Site Configuration

<p>What level of registered Payor functionality do you wish to deploy? *</p> <p><i>*The application supports Payor registration (or enrollment), which allows Payors to select an ID and password, store account information, access payment history, and edit/cancel payments.</i></p>	<input type="checkbox"/> Do not deploy the registration feature <input type="checkbox"/> Require registration <input type="checkbox"/> Allow registered and non-registered Payors
<p>Do you wish to employ U.S. Bank/Anexsys co-branding on your site (co-branding discount applies)</p>	<input type="checkbox"/> No <input type="checkbox"/> Yes
<p>Provide the URL Payors will return to when they have completed their payment</p>	
<p>Provide Purchaser's customer service phone number, customer service email address (if available) and text you wish Payor to view if the customer service link is selected.</p>	<p>Cust service phone#:          Cust. service email:          Cust. service text: (250 character max)</p>
<p>Provide a copy of your standard logo</p>	
<p>Provide the text you wish displayed as your Privacy Policy</p>	

### Section 6: Administrative site information

<p>Provide the information for the individual that will be designated as the Purchaser's Administrative Manager and who will set up and maintain administrative user IDs, access, and entitlements.</p>	<p>Name          Job title          Email Address          Phone Number</p>
<p>Three groups, or levels, of administrative users may be established, and administrative entitlements for each group may be established. Please provide the name of the three levels of permission for administrative users</p>	<p>Name          Level I          Level II          Level III</p>

Define which administrative tasks each level of permission will be authorized to perform by checking the box next to each function that level is authorized to perform.		Level 1	Level 2	Level 3
	<b>Add, Update, or Delete Admin Profile</b>			
	Add Admin User			
	Edit Admin User			
	Delete Admin User			
	Reset Admin Password			
	<b>Search for Payor</b>			
	View Payor Profile			
	Edit Payor Profile			
	Reset Password			
	View Payments			
	View Individual Payment			
	Edit Individual Payment			
	Cancel Individual Pymt			
	Make New Payment			
	Issue Refund/Void			
	View Recurring Pymts			
	View Individ Recur Pymt			
	Edit Individ Recur Pymt			
	Cancel Indiv Recur Pymt			
	View Payor Accts			
	<b>Search for Payment</b>			
	View Individual Payment			
	Edit Individual Payment			
	Cancel Individual Pymt			
	<b>View Reports</b>			
	Payment Summary Reports			
	Payment Detail Reports			
	ACH Returns Reports			
	Web Payor Statistics Reports			

#### Section 7: Additional Services Requested

***[DIS and US Bank are currently negotiating additional Services to be provided under the Master Contract. There are none at this time.]***